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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 KRIS DALE PAUL,

11 Plaintiff,

12 v.

13 NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

14 Defendant.

CASE NO. 16cv1479-WQH-KSC

ORDER

HAYES, Judge:

15 The matter before the Court is the review of the Report and Recommendation  
16 (ECF No. 21) issued by United States Magistrate recommending that this Court grant  
17 Plaintiff's Motion for Summary Judgment (ECF No. 17) and deny Defendant's Cross-  
18 Motion for Summary Judgment (ECF No. 19).

19 **I. Background**

20 On February 23, 2012, Plaintiff filed an application for disability insurance  
21 benefits and supplemental security benefits, alleging disability beginning August 1,  
22 2006. Plaintiff's application was denied at the initial level and upon reconsideration.

23 On January 5, 2015, the ALJ issued a written decision finding Plaintiff not  
24 disabled. The ALJ found that Plaintiff has the following severe impairments:  
25 degenerative disc disease, right leg cellulitis, post-left wrist surgery, and affective  
26 disorder. The ALJ found that Plaintiff does not have an impairment or combination of  
27 impairments that meet or equal the severity in the Listing of Impairments. The ALJ  
28 found that Plaintiff was not able to return to any past relevant work which included

1 construction worker and heavy equipment operator. The ALJ found that Plaintiff has  
2 the residual functional capacity to perform light work with certain restrictions including  
3 “could stand and walk for one hour at a time for a total of 4 hours in an 8-hour  
4 workday.” (AR14). The Appeals Council for the Social Security Administration  
5 denied Plaintiff’s request for further review.

6 Plaintiff filed a Complaint to obtain judicial review of the final decision by the  
7 Commissioner. After the filing of cross-motions for summary judgment, the Magistrate  
8 Judge issued the Report and Recommendation. (ECF No. 21). The Magistrate Judge  
9 concluded that substantial evidence does not support the ALJ’s non-disability  
10 determination at step five of the disability analysis. The Magistrate Judge found that  
11 the transcript hearing indicates the ALJ presented incomplete hypotheticals to the  
12 vocational expert at the hearing, mistakenly omitting the standing and walking  
13 limitations. Absent the standing and walking limitations, the Magistrate Judge found  
14 that the conclusion that Plaintiff can perform the light work of table worker and final  
15 assembler is not supported by the record.

16 The Report and Recommendation filed on August 25, 2017 states, “Within  
17 fourteen (14) days after being served with a copy of third Report and Recommendation,  
18 ‘any party may serve written objections.’ 28 U.S.C. § 636(b)(1)(B)&(C).” The docket  
19 reflects that no objections to the Report and Recommendation have been filed.

## 20 **II. Review of the Report and Recommendation**

21 The duties of the district court in connection with a report and recommendation  
22 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28  
23 U.S.C. § 636(b). The district judge must “make a de novo determination of those  
24 portions of the report . . . to which objection is made,” and “may accept, reject, or  
25 modify, in whole or in part, the findings or recommendations made by the magistrate.”  
26 28 U.S.C. § 636(b). The district court need not review de novo those portions of a  
27 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416  
28 F.3d 992, 1000 n. 13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th

1 Cir. 2003) (en banc).

2 The Court has reviewed the Report and Recommendation, the decision of the  
3 ALJ, the administrative record, and the submissions of the parties. The Court adopts  
4 the Report and Recommendation in its entirety.

5 **III. Conclusion**

6 IT IS HEREBY ORDERED that (1) the Report and Recommendation (ECF No.  
7 21) is adopted in its entirety; (2) the motion for summary judgment (ECF No. 17) filed  
8 by Plaintiff is granted; (3) the cross-motion for summary judgment (ECF No. 19) filed  
9 by Defendant is denied. The case is remanded for further proceedings. The Clerk of  
10 the Court shall enter judgment in favor of Plaintiff.

11 DATED: September 21, 2017

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13 **WILLIAM Q. HAYES**  
14 United States District Judge  
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